

October 18, 1991

Hoaliku L. Drake, Chairperson
Hawaiian Homes Commission
Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813

Dear Ms. Drake:

Re:Hawaiian Home Lands Lessee Data File and Lessee Ledger
Trial Balance and Age Analysis

This is in response to your letter dated January 11, 1990 to the Office of Information Practices ("OIP") requesting an advisory opinion concerning the disclosure of the Department of Hawaiian Home Lands ("HHL") Lessee Data File ("Data File") and Lessee Ledger Trial Balance and Age Analysis ("Trial Balance").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the HHL is required to make its Data File and Trial Balance available for public inspection and copying.

BRIEF ANSWER

Under the UIPA, information regarding land ownership, transfer, and lien records, including real property tax information and leases of State land, is required to be made available for public inspection and copying. Haw. Rev. Stat. . 92F-12(a)(5) (Supp. 1990). Furthermore, the "[n]ame, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan" are public under the UIPA. Haw. Rev. Stat. . 92F-12(a)(8) (Supp. 1990).

The Data File and Trial Balance maintained by the HHL contain information concerning lessees of Hawaiian homestead land and borrowers of State funds under the HHL program. The Trial Balance may be disclosed in its entirety because section 92F-12(a)(8), Hawaii Revised Statutes, requires disclosure of information such as the names of lessees borrowing funds from the HHL, their principal balances due, any other charges due, aged account balances for 30, 60, 90 and 120 days, and citation dates, if any. Furthermore, because section 92F-12(a)(5), Hawaii Revised Statutes, makes leases of State land public, information such as the lessee number and the island on which the leased property is situated is already made public by the lease and, thus, this information contained in the Trial Balance must also be made public under the UIPA.

In contrast, the Data File contains personal information about lessees such as their home addresses, their social security numbers, and the social security numbers of their spouses, each of which is protected by the UIPA's personal privacy exception and should be deleted from the Data File before disclosure. HHL lessees have a significant privacy interest in this information, which is not outweighed by the public interest in disclosure under the UIPA's balancing test. As such, it is our opinion that the disclosure of this information would be a clearly unwarranted invasion of privacy.

The Data File also contains a column indicating the lessees' and the lessees' spouses' native Hawaiian quotients. Although we believe that an individual has a significant privacy interest in his or her ethnicity, disclosure of the native Hawaiian quotients of lessees and their spouses would shed substantial light on whether the HHL is granting leases only to individuals who qualify as "native Hawaiians" under the Hawaiian Homes Commission Act. Accordingly, we conclude that the public interest in knowing that HHL leases are being granted to, and HHL funds are being received by, qualified individuals outweighs the lessees' and their spouses' privacy interest in information concerning their ethnicity. For this reason, it is our opinion that information concerning the native Hawaiian quotient of lessees and their spouses should not be deleted from the Data File before it is made available for inspection and copying.

FACTS

Under the Hawaiian Homes Commission Act of 1920 (the "Act"), the HHL leases tracts of lands to native Hawaiians over

the age of 18 who are descendants of not less than one-half part of the races inhabiting the Hawaiian Islands before 1778. As part of its program, the HHL also provides financial assistance in the form of loan guarantees and loans for purposes such as home construction, home improvement and repair, farming, and ranching.

I. LESSEE DATA FILE

The HHL maintains compiled information about lessees and their leases in the Lessee Data File ("Data File"). The Data File contains the following informational columns:

1. Name of lessee
2. Mailing address of lessee
3. Social security number of lessee
4. Social security number of lessee's spouse
5. Native Hawaiian quotient of lessee
6. Native Hawaiian quotient of lessee's spouse
7. Survivor
8. Lot number
9. Tax map key
10. Area
11. Lot type
12. Dwelling
13. Lease number
14. Effective date (of the lease)
15. Status
16. Status Date
17. Ratified

Several of these columns require further explanation and clarification. The survivor column indicates the status of survivorship designations made by lessees. Pursuant to section 209 of the Act, lessees of Hawaiian homestead lands may designate survivors/successors to the leasehold interest "[f]rom the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews" Hawaiian Homes Commission Act, 1920 . 209 (Vol. 1, Haw. Rev. Stat., Supp. 1990). Upon the lessee's designation of survivors/successors to the leasehold interest, the HHL reviews the survivorship designation and the status of this designation review is indicated by alpha characters in the Lessee Data File. However, the names of designated survivors are not identified in the Data File. There are various alpha characters used by the HHL to

indicate the status of survivorship designations, examples of which are as follows:

Y = Survivorship designation approved.
N = No survivorship designation.
I = Survivorship designation invalid.
S = Survivorship designation subject to
verification.

The "lot number" column shows the number assigned to each leased lot by the HHL and is the same number as the lessee number found on the Trial Balance. The "area" column indicates the name of the area in which the leased lot is located. The "lot type" column shows whether the lot is agricultural, residential or pastoral, and the "dwelling" column indicates whether a dwelling has been erected upon the lot.

The "status," "status date," and "ratified" columns involve the transfer of the lease from the lessee to a successor. In the "status" column, the presence of the alpha characters "TRN" indicates that the lease is in the process of being transferred from the lessee to a successor. The "status date" column shows the date that this transfer was initiated. Finally, the "ratified" column shows that the transfer to the designated successor has been ratified by the Commission on Hawaiian Home Lands.

II. LESSEE LEDGER TRIAL BALANCE AND AGE ANALYSIS

The HHL also maintains a Lessee Ledger Trial Balance and Age Analysis ("Trial Balance") which contains the names of lessees who have borrowed funds from the HHL, their lessee number (i.e., their lot number), the island on which their leased property is situated, their principal balances due, any other charges due, aged account balances for 30, 60, 90 and 120 days, and dates of citations for failure to pay.

You have requested an advisory opinion concerning whether, under the UIPA, the Data File and the Trial Balance must be made available for public inspection and copying.

DISCUSSION

I. INTRODUCTION

The UIPA generally provides that "[a]ll government records are open to public inspection unless access is restricted or

closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1990). Furthermore, section 92F-11(b), Hawaii Revised Statutes, provides that, unless one of the exceptions to disclosure set forth at section 92F-13, Hawaii Revised Statutes, applies, "each agency upon request by any person shall make government records available for inspection and copying during regular business hours." For clarity, our discussion concerning public access to the Data File and the Trial Balance will be addressed separately.

II. DISCLOSURE OF THE LESSEE DATA FILE

Section 92F-12, Hawaii Revised Statutes, contains a list of records which agencies are affirmatively required to make available for public inspection and duplication during regular business hours. Among the list of records required to be disclosed are "[l]and ownership, transfer, and lien records, including real property tax information and leases of State land." Haw. Rev. Stat. . 92F-12(a) (5) (Supp. 1990) (emphasis added).

The HHL leases contain information such as lessees' names, effective date of the lease, lease number, lot number, and tax map key number. This information is also contained in the Data File. Because section 92F-12(a) (5), Hawaii Revised Statutes, specifically makes leases of State land public, we conclude that the information in the Data File which is also contained in the HHL leases must be made public.

In addition, information revealing the area in which the lot is located, the lot type, the presence or absence of a dwelling on the lot, the status of any survivorship designation, the status of the transfer of the lease (if applicable), the date such transfer was initiated (if applicable), and the ratification by the Commission on Hawaiian Home Lands of the transfer (if applicable) should also be disclosed because, in our opinion, the exceptions contained in section 92F-13, Hawaii Revised Statutes, do not protect this information from disclosure. However, the UIPA's personal privacy exception may apply to the mailing addresses, social security numbers, and native Hawaiian quotients in the Data File and, therefore, a closer examination of these categories of information must be performed to determine if any of this information should be deleted from the Data File before disclosure.

In previous opinions, the OIP has determined that disclosure of social security numbers and home addresses would constitute a clearly unwarranted invasion of privacy and, thus, must not be disclosed to the public. See OIP Op. Ltr. No. 89-4 (Nov. 9, 1989) (deletion of social security numbers and mailing addresses of individuals on an agency waiting list for homestead leases), OIP Op. Ltr. No. 89-14 (Dec. 15, 1989) (deletion of social security numbers of inmates at correctional facilities), and OIP Op. Ltr. No. 90-7 (Feb. 9, 1990) (deletion of birthdates and social security numbers before disclosure to a private non-profit organization); but see OIP Op. Ltr. No. 89-8 (Nov. 20, 1989) (a public record which is expressly required to be disclosed cannot be sanitized to omit the social security number of an individual if the social security number is included within the record). We find no reason that would lead us to depart from the rationale of these opinions and, accordingly, the social security numbers of lessees and their spouses should be kept confidential and deleted from the Data File before it is publicly disclosed.

Although previous OIP opinion letters have determined that an individual's home address, as contained in a government record, should not be disclosed under the UIPA, the addresses in the Data File are mailing addresses and may consist of home addresses, post office box numbers, and business addresses. Further, the address given in the Data File is not necessarily the address of the HHL leased property. We realize that an individual's privacy interest in a post office box number is minimal because a post office box number does not reveal the location of a person's residence. Furthermore, as is reflected by sections 92F-12(a)(13) and (14), Hawaii Revised Statutes, individuals usually lack a significant privacy interest in their business addresses. However, because there is no way to distinguish whether the address given to the HHL is a business address or a home address, we conclude that the mailing address information contained in the Data File must be kept confidential.

The Data File also contains information which indicates lessees' and their spouses' native Hawaiian quotients. We believe that there is a significant privacy interest in an individual's ethnicity. See OIP Op. Ltr. No. 91-12 at 5, n. 5 (Aug. 8, 1991). Other courts have also found that individuals have a significant privacy interest in ethnicity and citizenship information.

In CBS, Inc. v. Partee, 556 N.E.2d 648 (Ill. App. 1 Dist. 1990), the Appellate Court of Illinois held that the state's attorney, in response to a request for information made under the Illinois Freedom of Information Act, could exempt from disclosure information regarding the race of assistant state's attorneys. The Appellate Court agreed with the lower court's finding that "publication of the names and races together of the individual assistant State's Attorneys could constitute a substantial invasion of personal privacy." CBS at 655.

Similarly, in Hemenway v. Hughes, 601 F.Supp. 1002 (D.D.C. 1985), plaintiff requested and was denied access to information concerning the citizenship of individuals accredited to attend Department of State press briefings. The court agreed with the government's denial of the citizenship information and held that "a blanket release of citizenship information, made without regard to the interests or concerns of individual correspondents, would constitute a 'clearly unwarranted invasion of personal privacy'. . . ." Hemenway at 1007.

We believe that the HHL lessees and their spouses have a significant privacy interest in the native Hawaiian quotient information contained in the Data File. However, this significant privacy interest must be balanced against the public interest in disclosure in order to determine whether disclosure of the native Hawaiian quotient information in the Data File would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes.¹

In previous OIP advisory opinions, we concluded that the "public interest" to be considered under the UIPA's balancing test is the public interest in the disclosure of "[o]fficial information that sheds light on an agency's performance of its statutory purpose," see OIP Opinion Letter No. 90-7 (Feb. 9, 1990), and in information which sheds light upon the conduct of

¹The legislative history of the UIPA provides that "[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

government officials, see OIP Opinion Letter No. 90-17 (Apr. 24, 1990). Two of the UIPA's basic purposes and policies are to "[p]romote the public interest in disclosure" and to "[e]nhance governmental accountability through a general policy of access to government records." Haw. Rev. Stat. . 92F-2 (Supp. 1990).

Further, in enacting the UIPA, the Legislature declared that "it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible." Haw. Rev. Stat. . 92F-2 (Supp. 1990). Thus, the public interest to be considered in applying the UIPA's balancing test is the public interest in disclosure of information which sheds light on an agency's performance of its duties and the conduct of government officials, or which otherwise promotes governmental accountability. On the contrary, however, in previous OIP advisory opinions, we reasoned that this "public interest," in the usual case, is "not fostered by disclosure of information about private citizens that is accumulated in various government files but that reveals little or nothing about any agency's own conduct." OIP Op. Ltr. No. 89-16 (Dec. 27, 1989), quoting, U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 109 S. Ct. 1468, 1481, 103 L. Ed. 2d 774, 796 (1989).

In OIP Opinion Letter No. 89-4 (November 9, 1989), this office concluded that the public interest in disclosure of the HHL waiting list outweighed the privacy interests of the HHL applicants on the waiting list because the disclosure of the waiting list would open up government procedures to public scrutiny in judging whether the award process was being administered efficiently. Moreover, disclosure would permit the public to examine the possibility of rumored favoritism and unfairness in the awarding of Hawaiian homestead leases.

Similarly, accusations have been made recently that the HHL awarded leases to non-native Hawaiians while qualified native Hawaiians were placed on the waiting list. We realize that lessees and their spouses have a significant privacy interest in their ethnic background; however, we believe that the native Hawaiian quotient information in the Data File must be disclosed in order to shed light on the HHL's performance of its statutory duties and to promote government accountability in accordance with the general principles of the UIPA. Disclosure of lessees' and their spouses' native Hawaiian quotient is the only way to

demonstrate to the public that the Hawaiian Homelands program is benefiting the proper individuals. Therefore, we believe that the public interest in the disclosure of this information outweighs the HHL lessees' significant privacy interest in their ethnicity. Consequently, we conclude that the lessees' and their spouses' native Hawaiian quotient information in the Data File must be made public under the UIPA.

III. DISCLOSURE OF THE LESSEE TRIAL BALANCE AND AGE ANALYSIS

Unlike the Data File, the Trial Balance may be disclosed in its entirety. Pursuant to section 92F-12(a)(8), Hawaii Revised Statutes, the "[n]ame, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan" must be made available for inspection and copying "any provision to the contrary notwithstanding." In OIP Opinion Letter No. 89-5 (Nov. 20, 1989), this office also determined that State loan programs records, including loan amount, repayment efforts, and age of delinquency are public under the UIPA. Therefore, based upon section 92F-12(a)(8), Hawaii Revised Statutes, and OIP Opinion Letter No. 89-5, we conclude that the names of lessees borrowing funds from the HHL, their principal balances due, any other charges due, and aged account balances for 30, 50, 90 and 120 days must be made available for public inspection. In addition, because the citation date listed on the Trial Balance indicates the "current status of the loan" pursuant to section 92F-12(a)(8), Hawaii Revised Statutes, we conclude that citation dates listed in the Trial Balance must be made public under the UIPA.

We have already determined that lessee numbers (i.e., lot numbers) and tax map key numbers contained in HHL leases are made public by section 92F-12(a)(5), Hawaii Revised Statutes. Therefore, we conclude that the lessee numbers and the island on which the leased land is located, which are both contained in the Trial Balance, must also be made public.

CONCLUSION

The Data File should be disclosed upon deletion of the lessees' mailing addresses and the social security numbers of the lessees and their spouses. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy and would shed no light on the conduct of the HHL. However, all remaining information contained in the Data File,

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including the column indicating the native Hawaiian quotients of lessees and their spouses, must be made available for inspection and copying.

The information contained in the Trial Balance concerning loans from the HHL is expressly required to be made public under section 92F-12(a)(8), Hawaii Revised Statutes. In addition, the Trial Balance also contains the lessee numbers and the islands on which the leased land is located. This information is already made public through the HHL leases and, therefore, should not be deleted from the Trial Balance. We conclude that, under the UIPA, the Trial Balance must be disclosed without any deletions.

Very truly yours,

Stella M. Lee
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

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